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## **Alien Work-Authorization Verification: Can This Broken System Be Fixed?**

### *Executive Summary*

- Any comprehensive immigration reform effort should include a repair of the work-authorization verification system. Created to assure that employers do not break the law by hiring illegal aliens, it, today, is effectively broken.
- Incredibly, the current system makes no use of the government's databases or of any other tools used by the public or private sector to try to confirm that a person's work-authorization documents are valid.
- The current system places the burden on the eyes of each of the nation's 7 million employers to accept one or a combination of 29 easily counterfeited documents (see addendum) to determine work eligibility. Yet, employers also are liable for discrimination if they are too vigorous in their inspection.
- The employer does not submit his findings to any federal agency, but merely retains the report in his filing cabinet. No federal agency routinely checks these reports.
- Congress should establish an accurate, workable work-authorization program that fixes the current system – starting with a verification system that takes the burden off the employer and places it with government.
- The House of Representatives made an attempt to upgrade the system in passing a requirement to make the current automated pilot program mandatory – but this path has not been well received by the business community.
- There are viable solutions. Government should consider how to simplify the process for employers while reducing fraud. For example, Congress could reduce the employer's burden to a one-step process utilizing one secure and universal work credential.



## Introduction

Any comprehensive immigration reform effort must include a repair of the work-authorization verification system – a system that was created to assure that employers do not break the law by hiring illegal aliens, but which today is effectively broken. As long as illegal aliens believe that they can obtain a job in the United States, illegal immigration will persist.<sup>1</sup> And, they have reason to believe it because, clearly, government is not doing its job to uphold the rule of law.

Last year, the House of Representatives made an attempt at repairing the broken work-authorization system in its immigration bill (its efforts are detailed in this paper); this year, the Senate is expected to address immigration and border security. Meanwhile, the President, in his State of the Union address, called for a comprehensive temporary worker program (“TWP”) for illegal aliens. This paper will not further address this proposal, but it is important to recognize that any special visa given to temporary workers will not, *in and of itself*, ensure that only authorized workers can gain employment in the United States because illegal immigrants who chose not to become “legal” could still claim to be citizens and present counterfeit documents to gain employment.

Congress and the administration should establish an accurate, *workable* work-authorization system that fixes the current system’s greatest flaws. There are two general causes of complaint: 1) the verification system, which places most of the burden on the employers with incredibly little government intervention or enforcement; and 2) the prevalence of fraud, which the system allows for – and likely even promotes.

This paper explores many of the current system’s flaws, and considers how Congress may wish to address them. While it does not offer definitive policy solutions, it does make one compelling recommendation: doing nothing is not an option if Congress has any intention of reforming immigration and border security practices.

Maintaining the status quo leaves in place two huge problems. First, it perpetuates the social and economic challenges that are generated (or contributed to) by the growing population of illegal aliens, a problem more and more Americans believe is untenable.<sup>2</sup> Second, it weakens

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<sup>1</sup> Congressional Budget Office (CBO), “The Role of Immigrants in the U.S. Labor Market,” (2005), p. 2. Linda Levine, Congressional Research Service, “Immigration: The Labor Market Effects of a Guest Worker Program for U.S. Farmers,” 95-712E, February 20, 2004, p. 4. Clearly, the major cause of illegal immigration to the United States is the “job magnet,” or alien perception that employment opportunities are plentiful, easily obtainable, and provide better conditions than those of their home country. Daniel T. Griswald, “Willing Workers,” Center for Trade Policy Studies, Cato Institute, October 15, 2002, p. 5.

<sup>2</sup> There has been an enormous impact of an estimated 10 million illegal aliens living in the country and of those 7 million working here. Jeffrey Passel, Pew Hispanic Center, “Estimates of the Size and Characteristics of the Undocumented Population,” March 21, 2005, p. 4. See also General Accounting Office (GAO), “Immigration Control: A New Role for the Social Security Card,” GAO/HRD-88-4 (1988), p. 15. Jobs in the United States provide livelihoods to millions of illegal alien workers, and there is evidence that their work provides Americans with services and goods at lower prices than they would if they were not working in the country. Large influxes of unskilled illegal alien workers, however, also depress the wages of American unskilled workers, (Borjas, George J., Freeman, Richard B., and Katz, Lawrence F., “On the Labor Market Effects of Immigration and Trade” (June 1991). Daniel T. Griswald, “Willing Workers,” Center for Trade Policy Studies, Cato Institute, October 15, 2002, p. 8. Government Accounting Office (GAO), “Illegal Aliens: Influence of Illegal Labor on Wages and Working



the rule of law because of the lack of effective immigration enforcement. Indeed, of the millions of employers in the United States<sup>3</sup> who last year collectively spent millions of man-hours<sup>4</sup> completing the required work-authorization paperwork on each of their approximately 40 million new employees,<sup>5</sup> the federal government issued only two notices of intent to fine employers in 2005 for violations, and only three the year before. Ultimately, only 10 final orders for fines were issued in 2005 (pending from previous years) and zero fines were issued in 2004 based on work authorization violations.<sup>6</sup>

## **The Employer Acting as Inspector and Law Enforcer: Good Policy?**

Before getting into the specifics of the current system, it is worth commenting that, even while the private sector and much of government take advantage of the many computerized databases and high-tech identification systems (such as those used with credit cards), the current employment work authorization system takes no advantage of this sophistication in an effort to deter illegal employment. Rather, it relies on the eyes and the honesty of each of the nation's 7.25 million employers<sup>7</sup> to accept, and then inspect, one or a combination of 29 listed documents (see addendum) that are intended to produce evidence of the employee's work eligibility, even while recognizing that each is open to counterfeiting. After his inspection of the allowable documents, the employer *does not submit his findings to any federal agency for further scrutiny, but merely retains the report* in his own office in the (now unlikely) event that the government seeks to review them. And there – in the employer's filing cabinet – the process usually ends.

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Conditions of Legal Workers," GAO/PEMD-88-13BR. There has also been some debate over the amount that illegal aliens cost taxpayers in terms of unchecked entitlements and other costs, such as emergency health care (see General Accounting Office (GAO), "Emergency Care: EMTALA Enforcement Issues" June 2001, GAO-01-747, p. 12.), Medicaid fraud (Department of Health & Human Services, "Self-Declaration of U.S. Citizenship for Medicaid," OEI-02-03-00190, July 6, 2005), education costs for children (General Accounting Office (GAO), "Illegal Alien School Children: Issues in Estimating State-by-State Costs," GAO-04-733, June 2004), costs associated with crime (Roberto Coronado, et al., Federal Reserve Bank of Dallas, "Impact of Illegal Immigration on Enforcement on Border Crime Rates," Working Paper 0303), and general infrastructure (General Accounting Office, "Illegal Aliens: National Net Cost Estimates Vary Widely," GAO/HEHS-95-133 (1999), p.2, 6, 14.). *Polling data also supports this.* See Neil Newhouse, Public Opinion Strategies, January 26, 2006 polling for U.S. Senate Retreat (85% of Americans believe illegal aliens should not receive welfare benefits); Luntz, Maslansky Strategic Research Services, "Respect for the Law & Economic Fairness: Illegal Immigration Prevention" (50% of Americans support enforcing the current laws, and 36% support new stricter laws) (October 2005); Latino Opinions, "Latino Opinions about Immigration" (50% of registered Hispanic voters approve of increasing the number of U.S. Border Patrol agents on the southwest border) (2006).

<sup>3</sup> U.S. Census Bureau, 2003 County Business Patterns, sets the number of business establishments in the United States at 7,254,745 for the United States in 2003, [www.censtats.census.gov/cgi-bin/cbpnaic/cbpsel.pl](http://www.censtats.census.gov/cgi-bin/cbpnaic/cbpsel.pl).

<sup>4</sup> American Council on International Personnel, "Worksite Enforcement in the Immigration Reform Debate" (2006), ("The emphasis on paperwork, however, became burdensome to employers, who collectively spent tens of millions of hours each year completing I-9 forms ..."), <http://www.acip.com/positionpapers>.

<sup>5</sup> U.S. Department of Labor, Bureau of Labor Statistics, <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet>.

<sup>6</sup> Government Accountability Office (GAO), "Immigration Enforcement: Preliminary Observations on Employment Verification and Worksite Enforcement Efforts," GAO-05-822T (June 21, 2005). Oversight Hearing, House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Border Security, & Claims, Oversight hearing, "Lack of Worksite Enforcement & Employer Sanctions," June 21, 2005. Email from Immigration & Customs Enforcement (ICE) to Senate Republican Policy Committee (February, 2006).

<sup>7</sup> U.S. Census Bureau, 2003 County Business Patterns, sets the number of business establishments in the United States at 7,254,745 for the United States in 2003, [www.censtats.census.gov/cgi-bin/cbpnaic/cbpsel.pl](http://www.censtats.census.gov/cgi-bin/cbpnaic/cbpsel.pl).



The use of government's resources (including its multiple databases) to verify work eligibility is not mandatory – in fact, as this paper will detail, it almost never occurs.

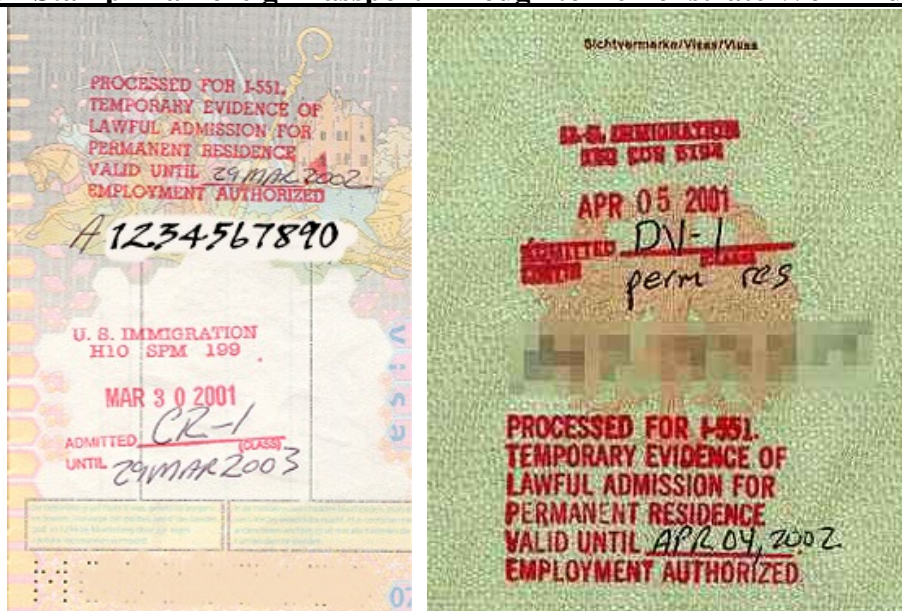
### **The Present Process: What is Required of Employers?**

The law sets out the provisions for the employer to inspect employee documentation establishing identity and work authorization (called the “paper I-9 Process”). Employers must complete an “I-9” form for all new hires with the following information:

1. the new employee's name and address;
2. his Social Security number (*de facto optional*);
3. his citizenship or alien status (and “Alien Number”);
4. employer's and employee's signature;
5. a certification by an employer that he has seen one or a combination of documents (from a list of 29 – see Chart 1 in the addendum) that singly or together verify the new hire's identity and work authorization; and,
6. document number(s) and expiration date(s) (if any) of the supporting document(s).

The employer may not ask for more or different documents than those he is required to accept from the employee under the paper I-9 work authorization system. That *may be as few as one document*, and that one document – *such as a foreign passport with an I-551 ink stamp in it* (see photo below) – well may be one whose authenticity is not easily recognized by most employers. Nonetheless, the employer accepts the document or documents, and then merely maintains the I-9 form certifying what he saw.

### **I-551 Stamp in a Foreign Passport- Enough to Demonstrate Work Authorization.**



(These pictures were obtained by the author on the Internet through [www.google.com](http://www.google.com)).<sup>8</sup>

<sup>8</sup> See <http://images.google.com/images?q=I-551&hl=en>.



## **How Does the Law Put Employers ‘Between a Rock and a Hard Place’?**

Looking at this system from the employers’ perspective, it is much more than merely an expensive paperwork exercise. The system is broken because, from the moment the employers begin the paperwork process, the law places them “between a rock and a hard place.”<sup>9</sup> That is, while one provision punishes them with heavy fines if they fail to sufficiently inspect the documents, another provision makes them liable for discrimination if they too vigorously inspect the documents.<sup>10</sup>

Specifically, Section 274A of the Immigration & Nationality Act makes it unlawful for any person or entity to knowingly hire, recruit, or continue to employ an alien who is unauthorized to work in the United States. It sets out the paper I-9 process procedures, and provides fines for paperwork violations of this procedure. Fines range from \$275 to \$11,000 for knowingly hiring each illegal alien, depending on whether the violation is a first or subsequent offense.

If employers view section 274A as the “rock,” then they view section 274B as the “hard place.” Section 274B prohibits discrimination in the hiring of employees on the basis of citizenship status or national origin. An employer of more than three persons may not discriminate in the hiring or recruiting of a U.S. citizen or an alien authorized to work in the United States on the basis of national origin or citizenship status (with some exceptions, such as with certain national security jobs). In enacting section 274B, the concern that employers might refuse to hire people who do not “look American” or who have an accent, out of fear of sanctions under section 274A, has instead placed employers in an impossible legal position. The employer may not refuse to “honor documents tendered by the employee that on their face reasonably appear to be genuine” (with the intent to discriminate against the employee). That section of law also prohibits employer retaliation or intimidation against an employee seeking to exercise his rights under this section (such as dismissing the employee, even if he suspects him to be an illegal alien), and such retaliation or intimidation is considered discrimination *per se* under the law.

## **While Employers Cipher Work Eligibility, What Does Government Do?**

Under the current system, employers essentially act as government inspectors and as law enforcement officials because, more often than not, it is the employer, and the employer alone, who examines the documents and determines their genuineness, and thus, the employee’s work eligibility. The federal government exercises little role as either inspector or law enforcer.

The federal agency that has enforcement responsibility in this system is the Immigration & Customs Enforcement (ICE), in the Department of Homeland Security (DHS). If a violation

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<sup>9</sup> Immigration Reform and Control Act (IRCA) instituted the provisions of Immigration Nationality Act (INA), sections 274A and 274B, beginning on November 6, 1986.

<sup>10</sup> American Council on International Personnel, “Worksite Enforcement in the Immigration Reform Debate” (2006), citing National Immigration Forum, “Interior Enforcement: Strategies Contradict American Values,” (Dec. 2001), states, “Moreover, employers were placed in a position where they had to become experts in document fraud – an obligation particularly onerous to small employers .... To exacerbate the situation, employers who acted out of an abundance of caution and questioned employment eligibility *risked liability under IRCA for discrimination.*”



is found, ICE may issue a Notice of Intent to Fine to the employer. As noted above, however, few such notices have been issued in recent years. Apparently, Immigration & Customs Enforcement, and to some degree its predecessor, the Immigration & Naturalization Service (INS), were not (and have not been) directed to devote a large percentage of agency resources toward I-9 inspections.<sup>11</sup> In FY 1999, the former Immigration & Naturalization Service allocated 240 full-time-equivalent officers to worksite enforcement, but in FY 2003, only 90 full-time-equivalents were assigned.<sup>12</sup>

### **Is Work-Authorization Enforcement an Agency Priority?**

It appears that this federal agency lacks both the man-power and the mission to carry out wide-scale immigration inspections. This latter problem may have developed after ICE was created with Department of Homeland Security. Because two-thirds of the new agency's officers originally came from the Department of Treasury, the legacy missions seem to be reflected in the merged agency (i.e., former Customs officials naturally feel more comfortable with customs enforcement issues). In 2005, the Government Accountability Office (GAO), among other witnesses, testified before the House Committee on the Judiciary that Immigration & Customs Enforcement did not see non-critical infrastructure worksite enforcement as a primary mission, and that it continued to fill primary and field management positions almost exclusively with former Customs officers rather than former Immigration officials.<sup>13</sup>

Even if worksite enforcement were to be made a priority, the reality of the situation is that making the current system workable likely would require even more personnel than the agency's total number of Special Agents (the entire agency contained 5,769 Special Agents in FY 2005) if it were to adequately provide sufficient inspection and enforcement over all of the nation's employers.<sup>14</sup> And that is unlikely to happen as long as the agency's missions include prevention of domestic terrorism. As such, what little worksite enforcement that has been conducted recently has concentrated on "critical infrastructure" employers (for example, subcontractors for military testing facilities) because of terrorism concerns,<sup>15</sup> or are corollary to

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<sup>11</sup> Government Accountability Office (GAO), "Weaknesses Hinder Employment Verification & Worksite Enforcement Efforts," GAO-05-813 (2005), p. 32.

<sup>12</sup> Ibid.

<sup>13</sup> At the time of merger, there were more higher-graded Customs officials than immigration officials which may account, in part, for the disparity; customs-related work was considered more complex in nature and, therefore, required oversight by higher-graded officials. Some disparities in rank (not management) were corrected after the merger, although the grading system of the Office of Personnel Management (OPM) still reflects differences in rank and complexity of work. However, Congressional Research Service (CRS), issued "Enforcing Immigration Law: Issues of Complexity," discussing the complexity of modern immigration law and cite the 9<sup>th</sup> Circuit Court of Appeals ("immigration laws have been termed second only to the Internal Revenue Code in complexity" *Castro-O'Ryan v. INS*, 821 F.2d 1415, 1419 (1987)) and District Court (the immigration law resembles "King Mino's labyrinth in ancient Crete ... second only to the Internal Revenue Code in complexity." *Chan v. Reno*, 1997 U.S. Dist. LEXIS 3016, \*5 (S.D.N.Y. 1997)).

<sup>14</sup> 2002 Figure. Government Accountability Office (GAO), "Weaknesses Hinder Employment Verification & Worksite Enforcement Efforts," GAO-05-813 (2005), p. 3, footnote.

<sup>15</sup> At least one of the original 9-11 terrorists was employed illegally. Without an accurate work authorization verification system, a full accounting cannot be made for 9-11 and other terrorist-related employment in the United States, but much has been written about terrorist embedding tactics. See Commission on Terrorist Attacks Upon the United States, "Aware that [Khalid al Mihdhar's] co-conspirators in Afghanistan and Pakistan would be sending him a new colleague shortly, he bided his time and worked for a few weeks at a gas station in La Mesa where some of his friends, including Abdullah, were employed. On one occasion, Hazmi told a fellow employee that he was



other investigations. And while this, indeed, has not been an inappropriate priority, the bottom line is that virtually all other (i.e., non-critical infrastructure) employers can operate under almost a guarantee that no inspections or enforcement will be directed toward their employees.

This huge systemic problem amounts to this: even if policymakers were to presume that every employer in America would do his best to comply with the law even while knowing that it is not enforced, it is reasonable to suggest that there are others who will not comply – namely, those who seek illegal employment and those in the black market who help them.

## **Does the System Allow For – or Even Promote – Fraud?**

The current I-9 form process is clearly vulnerable to document and identity fraud, and there is ample anecdotal evidence that illegal aliens provide to employers fraudulent documents in the paper I-9 process.

### **Don't Laws Address Fraudulent Documents for Work Authorization?**

Even though the statute criminalizes the use of fraudulent documents in gaining immigration benefits, the lack of enforcement (discussed above) and the wide range of fraudulent documents available create a “free-for-all” situation for work-authorization verification. The Immigration & Nationality Act’s section 274C was added by the Immigration Act of 1990. That section of law prohibits knowingly creating, using, altering, or counterfeiting documents to be used in the paper I-9 process or gaining any other benefit under the immigration laws. Further, it prohibits any individual from preparing or filing (or assisting in the preparation or filing of) any immigration form with knowledge (or in reckless disregard of the fact) that such form was made fraudulently.

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planning to find a better job, and let slip a prediction that he would become famous” (emphasis added) (2004), Ch. 7. The Staff Report of the National Commission on Terrorist Attacks Upon the United States (the “9/11 Commission”), “9/11 and Terrorist Travel,” reports that “Mahmoud Abouhalima, involved in both the World Trade Center and land plots, received temporary residence under the Seasonal Agricultural Workers (SAW) program.” One staffer also noted that: “[University of South Florida professor] Sami Al Arian, the highly publicized lead defendant in the pending terrorism case in Tampa, came under intense scrutiny in 1995 as the suspected leader of the Palestinian Islamic Jihad in the United States. In September 1992, for example, Al Arian filed a petition for a temporary worker visa with the Immigration and Naturalization Service under false pretenses on behalf of Bashir Musa Nafi, one of the organization’s original co-founders, who had worked for Palestinian Islamic Jihad at its London-based headquarters. The petition was granted ... Jesse Maali files for employment authorization on Hussam Yousef Abou Jbara’s behalf ... [Jbara was] co-founder of the Islamic Concern Project with Sami al-Arian ... As the two talked about Iyman Faris’ work as a truck driver in the United States, Faris told [9-11 Mastermind] Khalid Sheikh Mohammed that some of his deliveries were made to air cargo planes ... One terrorist, Mir Aimal Kansi, sought amnesty under the 1986 law for illegal entrants. Four others, three convicted for their roles in the 1993 World Trade Center bombing and one in the 1993 Landmarks case, sought amnesty under the Special Agricultural Workers Program. Three who sought amnesty under this program attained it.” The United States government is uncertain how many terrorists or potential terrorists embed themselves in American society by taking up employment. Policymakers and law enforcement may wish to have a high utility inspection tool in a comprehensive work-authorization regime.



Yet, numerous past reports have confirmed the existence of a vibrant market in false documents targeted at illegal aliens seeking employment in the United States.<sup>16</sup> And, it seems, as long as immigration enforcement is lax, the use of fraudulent documents will grow. Indeed, many observers have pointed to the growth in size and sophistication of the fraudulent documents industry.<sup>17</sup>

### **Fraudulent immigration documents from Immigration & Customs Enforcement raid**



### **How Does the Current System Promote Fraudulent Activity?**

The large number of acceptable documents allows for a variety of avenues to complete the I-9 form with fraudulent documents – a process made much easier with the black market’s recognition that it must fool only the employer (who is likely unfamiliar with authentication features of 27 different documents) and not an authentication expert.<sup>18</sup> The acceptable documents include those that even lay persons could counterfeit or fraudulently obtain with some ease. These documents include student identification cards, non-photo state or federal identification cards, school report cards, and foreign passports with I-551 “green card” rubber stamp (see page 6).<sup>19</sup> Needless to say, student report cards can be manufactured with a good computer scanner or even by a very good artist. An alien can obtain a foreign passport from his country’s consulate and can easily reproduce an ink imprint resembling an I-551 “green card” ink stamp. In fact, a Senate Republican Policy Committee analyst obtained the image of the rubber stamp (shown in the above section) with a simple Internet search.

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<sup>16</sup> Joint Hearing of the House of Representatives, Committee on the Judiciary, Subcommittees on Immigration, Border Security, & Claims, and on Crime, Terrorism, and Homeland Security, “Risk to Homeland Security from Identity Fraud and Identity Theft,” 107<sup>th</sup> Congress, 2d Sess., Serial No. 86 (June 25, 2002). General Accounting Office (GAO), “Identity Fraud: Prevalence and Links to Alien Illegal Activities, GAO-02-830T. The Commission on Immigration Reform (Barbara Jordan Commission) (1997), <http://www.utexas.edu/lbj/uscir/>.

<sup>17</sup> Ibid.

<sup>18</sup> General Accounting Office (GAO), “Immigration Control: A New Role for the Social Security Card,” GAO/HRD-88-4 (1988), p. 3, 24.

<sup>19</sup> The rubber stamp indicates that a hardened green card has been approved, but has not yet been sent to the alien.



And ask any college student about the ease of getting a “fake ID” for the purpose of being served alcohol. Another simple search on the Internet under “fake IDs” leads one to a fraudulent ID vender with a webpage heading “So, you’re looking for a fake ID,” and provides services to obtain a fake student ID card (see image below).<sup>20</sup> Recall that a student ID is acceptable as an identification document for paper I-9 purposes. The Government Accountability Office<sup>21</sup> has also reported on numerous cases of identity theft related to military documents, for which no data has even been compiled.<sup>22</sup>

### **Student IDs Can be Used in the Work Verification Process**



(These student IDs can be ordered on-line).<sup>23</sup>

### **Don't All Job Applicants Need a Social Security Number at Least?**

Recall that the current process does not require employees to provide the work identification item that the federal government values most highly: their Social Security number.<sup>24</sup> Because the Social Security number is used in so many government forms and interactions, including tax forms, it may hold the key to progress in work-authorization verification.<sup>25</sup> These numbers are widely used as an identifier for people throughout government, serving primarily as a means to record employment to assure that workers paying

<sup>20</sup> See, <http://www.phidentity.com/>, and <http://www.fpd-4-fake-ids.com/id.html>.

<sup>21</sup> Formerly known as General Accounting Office.

<sup>22</sup> General Accounting Office, “Identity Theft: Greater Awareness and Use of Existing Data Needed,” GAO-02-766 (2002), p. 62.

<sup>23</sup> See <http://www.phidentity.com/>.

<sup>24</sup> Of the 5.4 million original cards issued last year, 4.3 million were issued to American citizens; and about 93 percent of these Social Security numbers were issued through the hospital administrative process (approximately 4 million). Some American parents elect not to have their child receive a Social Security number at birth, and some Americans are born abroad or outside of a hospital. The Social Security Administration developed the enumeration-at-birth (EAB) process in 1987 as they recognized that all the information needed to process a Social Security number application for a newborn was gathered by hospital employees at the child’s birth and verified with the respective bureaus of vital statistics. No law requires state or local hospital participation. The program is administered under the provisions of a contract between each state and Social Security Administration. Approximately 13.5 million original and replacement Social Security numbers are issued through local Social Security offices each year; fewer than 15,000 cards are issued to aliens not allowed to work.

<sup>25</sup> Barbara Bovbjerg testimony, General Accounting Office (GAO), “Ensuring the Integrity of the SSN,” GAO-03-941T (2003), p. 1.



into the Social Security system will (if they qualify) receive earned benefits at retirement age. Yet, a job applicant – indeed, an employee – need not have or provide a Social Security number to be hired legally.

### **Don't Employers Need to Provide a Social Security Number For Tax Purposes?**

The current system is predicated on the assumption that an employee who does not provide a Social Security number to his employer at the onset will obtain one within a timely period. However, in most cases (a child support issue might prove an exception),<sup>26</sup> there is no follow-up. Even if, by the end of the tax year, an employee still has failed to provide his employer with his Social Security number, the employer simply notes on the worker's W-2 tax form that the number has been "*applied for*."

Theoretically, if a number has been applied for, the Social Security Administration would have record of such application, and could then eventually match up the name and number. In practice, this does not happen. Instead, the agency records the submission of Social Security funds into a suspense file, and inserts the numbers "000-00-0000," or nine zeros, in its database in lieu of an actual number. The Social Security Administration's concern is to credit earnings to the employee's record, but even when it cannot do so – as is the case with the nine zeros – it does not necessarily pass along the news of this missing information to the employer. Of course, this is problematic, since under the current system, it is the employer who acts as the primary law enforcer. There are no legal requirements to inform the employer, and the Social Security Administration rarely does (as explained in the next section).

In tax year 2003, the Social Security Administration entered 203,000 "nine-zero" W-2s into its database.<sup>27</sup> Does this number represent 203,000 illegal aliens? The Social Security Administration, which has no work-authorization law enforcement authority, does not know. Some other cases may be data-entering errors, some may be American-born employees who never gave their employer their correct number, and some likely are the same employee (work-authorized or not) who held multiple jobs in one tax year.

### **How Many Social Security Numbers Are Mismatched With Names?**

The problem of Social Security numbers not matching up to the name of the person to whom it was assigned is much larger than the number of those that the agency designates with nine zeros. A report issued by the Social Security Administration's Inspector General in 2005 opens a window onto the enormity of the problem. The Inspector General conducted a limited examination of the records of employers in the agriculture, restaurant, and service industries, analyzing the records of 100 employers in each of those industries. It found (see chart, below)

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<sup>26</sup> Title 42, section 653(a) requires the submission of Social Security information to states for child support enforcement purposes. See also *Internal Revenue Service (IRS) Publication 15, Circular E*, pp. 4, 8. "You are required to get each employee's name and Social Security number and to enter them on Form W-2. If you do not provide the correct employee name and Social Security number on Form W-2, you may owe a penalty unless you have reasonable cause. ... If you file Form W-2 on paper and your employee applied for an Social Security number but does not have one when you must file Form W-2, enter '*Applied For*' on the form."

<sup>27</sup> This statistic was provided by the Social Security Administration. Funds collected with these W-2 forms go into a Social Security Administration suspense file along with any other Social Security payroll taxes that the agency cannot credit to an individual.



that *those 300 employers alone submitted a total of 2.76 million mismatched Social Security numbers over a three-year period* (tax years 1999 through 2001). In addition to the nine-zero submissions, the report noted seven other categories of irregularities, the bulk of which (more than 2 million) were classified only as “Other Valid SSNs with Name Mismatches.” How many of these 2.76 million “irregularities” are due to W-2s being filed for unauthorized aliens? The report itself suggests that it is likely a high percentage, labeling “the magnitude” of these mismatches as “indicative of SSN misuse” rather than data error or failure to report a legal name change. And the IG report’s authors’ interviews with the employers whose records were examined imply that this “misuse” is largely from “unauthorized non-citizens.”<sup>28</sup>

## Analysis of Employers’ Earnings Suspense File Wage Items for Tax Years 1999-2001

| Types of Reporting Irregularities   | Industry  |            |             |           |
|---|-----------|------------|-------------|-----------|
|   | Service   | Restaurant | Agriculture | Totals    |
| Social Security Numbers (SSN) with All Zeros or with Zeros as the Area, Group or Serial Numbers | 7,715     | 9,936      | 12,618      | 30,269    |
| SSNs with All 9's   | 14        | 1,155      | 58          | 1,227     |
| SSNs with Area Number 666   | 289       | 228        | 264         | 781       |
| SSNs with Area Numbers 773-999  | 4,997     | 9,294      | 1,263       | 15,554    |
| Unassigned SSNs <sup>1</sup>  | 285,071   | 222,600    | 124,212     | 631,883   |
| Valid SSNs Assigned to Young Children <sup>2</sup>  | 4,675     | 2,510      | 2,284       | 9,469     |
| Valid SSNs Assigned to Deceased Individuals   | 2,749     | 1,549      | 1,054       | 5,352     |
| Other Valid SSNs with Name Mismatches   | 826,560   | 779,348    | 460,322     | 2,066,230 |
| Totals  | 1,132,070 | 1,026,620  | 602,075     | 2,760,765 |

<sup>1</sup> This category includes SSNs that the Social Security Administration (SSA) has never assigned.

<sup>2</sup> This category includes SSNs that SSA assigned to children under age 13.

(Social Security Administration, Inspector General, Report A-08-05-25023, April 2005).

The anecdotal evidence of widespread misuse of Social Security Numbers by unauthorized aliens (at least in these three industries) that this report presents comports with logic because most American workers have a strong motivation to be properly credited for their earnings. They understand that their failure to provide the correct Social Security number on

<sup>28</sup> Social Security Administration, Office of Inspector General, Report A-08-05-25023, April 2005.



their W-2 will result in the government's failure to award them all the pension benefits they have accrued. Meanwhile, many unskilled illegal aliens obtain very short-term and transient jobs in the agriculture, restaurant, and service industries, and likely assume that they will not obtain Social Security benefits from such illegal work.

In 2004, the Social Security Administration sent out 9.5 million letters to employees to inform them that their name and numbers did not match. The agency reports that, on average, *less than one percent of those mismatches are ever corrected*, a fact that suggests that there is a large amount of number misuse, but the agency will not even speculate how much of this may be the result of unauthorized alien workers.<sup>29</sup>

### **Doesn't the Government Punish Those Who Misuse Social Security Numbers?**

Incredible as it may seem, that very large number of Social Security name and number mismatches precipitates no government enforcement action. Rather, the accounting process is merely the end product of the Social Security Administration's comparison of names and numbers of the W-2 tax forms in its work with the Internal Revenue Service. These mismatches raise no red flags with any enforcement agency, nor do they carry any legal weight.<sup>30</sup>

Again, recall that the role of the Social Security Administration in processing the W-2 forms is for the purpose of crediting employees' Social Security accounts. And so, when it finds cases of mismatches between the submitted Social Security number and the employee name, its only response is to send so-called "no match" letters to those employees.<sup>31</sup> "No match" letters generally are sent only to the employee; they are sent to employers that submitted 10 non-matching W-2 forms, constituting more than one-half of one percent ( $1/2$  percent) of the total W-2 forms submitted by that employer.

As noted above, the Social Security Administration "no match" letter holds no legal weight, and, in fact, states that employers cannot dismiss anyone who receives a "no match" letter based solely on that letter. Recall that the employer is unlikely to be notified of this mismatch anyway. And there the process usually ends. Even if the DHS were to use this list of mismatches to pursue possible law violators, this process is further hindered by the fact that the

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<sup>29</sup> Statistics provided by the Social Security Administration. In one February 2006 email to the RPC, a Social Security Administration official stated, "The best proxy for evaluating the response to employer no-match letters is the number of corrected Forms W-2 that involve name/SSN combinations only. The number of such corrected W-2s is 0.5% of the SSNs covered by the employer no match letter."

<sup>30</sup> Social Security Administration processes wage reports as an agent of the Internal Revenue Service and, under section 6103 of the tax code, can only use tax return information to correctly post wages to workers' Social Security Administration records. When an employer submits Forms W-2, Wage and Tax Statements, to Social Security Administration at the end of the tax year, Social Security Administration will use the name and number on the Form W-2 to match the earnings reported for the individual to his or her earnings record.

<sup>31</sup> When a new hire has applied for, but not yet received a Social Security number, employers submitting wage reports electronically are required by IRS reporting instructions to use all zeros for the Social Security number (IRS reporting instructions state that employers submitting paper Forms W-2 should write "Social Security number applied for" on the form). However, if the Social Security number submitted is never corrected on a new W-2 form, the wage report that is sent to Social Security Administration will not be corrected and the earnings will remain in the suspense file. In addition, if the employee works only for a very short period of time and never provides the employer with a Social Security number, the employer who is still obligated to report the individual's wages and pay taxes on the wages may simply state "applied for" in the space provided for the Social Security number. Social Security Administration will enter this data as all zeros.



Social Security numbers are not submitted to any agency during the course of the year, but only to the Internal Revenue Service and Social Security Administration in conjunction with the tax forms. Thus, by the time a law-enforcement official might observe questionable data submitted on W-2 forms, an illegal alien might have long left the employ of the submitting employer.

### **Doesn't a Duplicate Social Security Number Suggest Identity Theft?**

Most Americans are aware of and concerned about “identity theft,” and so they likely would be very displeased to learn that the Social Security Administration does not inform them when the tax process reveals a duplicate use of the same name and Social Security number. (That is, the agency makes a distinction between a mismatch of name and number and a duplicate use of the correct name/number combination.)<sup>32</sup> Granted, the submission of the same set of Social Security numbers can happen for reasons other than identity theft – for example, if the person worked in more than one place at the same time or changed jobs during the year (i.e., duplicate W-2s for the same worker). Even so, the current system raises no red flags that this duplicate use of the Social Security name and number might be fraud.

Theoretically, an American whose name and Social Security number both were stolen and used by an illegal alien to work would complain to the Internal Revenue Service at the end of the tax year because his W-2 would imply that he was liable for taxes on wages he did not earn. However, this is neither a proper nor a foolproof method of finding fraud. Discrepancies indicating temporary work and submitted Social Security funds could easily be overlooked if the amount is small. Illegal aliens are often involved in short-term and low paying jobs, and their reported wage earnings using an American’s Social Security number could easily be mistaken for overtime pay. This theoretical check places the burden on honest Americans to rectify, and occurs only at the end of the tax year, when an illegal alien abuser may long be gone from the related employment.

### **Does the System at Least Flag Persons Expressly Not Work-Authorized?**

The current system does not even reveal to employers those who already have been expressly *not* authorized to work. In 1982, the Social Security Administration started issuing Social Security cards to non-resident aliens with a statement on the card’s face that work is not authorized without further documentation from the Department of Homeland Security.<sup>33</sup> Yet, the

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<sup>32</sup>Social Security Administration’s verification systems would not identify situations in which an individual assumes the identity of another individual (i.e., the individual is using a valid name/Social Security number combination that belongs to someone else) because the name/Social Security number combination submitted would match Social Security Administration records. While a “no-match” letter would not be issued in the situation noted above, the individual whose identity was stolen might be alerted to that theft when (a) the Social Security Administration sends an annual Social Security Statement to all workers over the age of 25 which includes a yearly breakdown of the earnings posted to the worker’s record (the individual would see that more wages were attributed to his yearly earnings than he had actually earned), and (b) the Internal Revenue Service might also recognize that more earnings are reported under his Social Security number than he claimed on his income taxes.

<sup>33</sup> Beginning in May 1982, Social Security Administration started issuing cards printed with the legend “Not Valid for Employment” to non-citizens not authorized to work. This was due to the increasing need for individuals to have Social Security numbers for non-work purposes and concerns that such individuals might otherwise use their Social Security numbers for work. Beginning in September 1992, Social Security Administration began issuing cards with the legend “Valid for Work Only with INS Authorization” to non-citizens lawfully in the United States with temporary authorization to work. Whether the person is a citizen or not is only recorded at the time of



employer is unlikely to be presented with that document if the alien is seeking illegal employment. Rather, the card holder instead submits some other documentation that is permitted by the law. Again, because the form will merely sit in a filing cabinet, the alien employee's non-authorized status is unlikely to come to the attention of the Immigration & Customs Enforcement – even if the employee elected to provide his correct Social Security number.

### **Would Requiring the Presentation of a Social Security Card Reduce Fraud?**

It must be recognized that the Social Security card, as it is presently issued, is also susceptible to counterfeiting and identity theft.<sup>34</sup> Current law requires the Social Security card to be printed on bank-note paper, and it also has some security features, including micro-printing, planchets, and patterns. Even so, there has been some evidence that Social Security cards are copied on regular color copy machines. The card lacks the many modern security features found on passports, border crossing cards, and some state driver's licenses. The Social Security Administration has considered adding pictures and fingerprints as additional security features; however, this would almost certainly require legislative action.

The agency clearly is aware of the potential for fraud, but has not devoted large amounts of resources to address it. For example, in 2002, the agency's Office of Inspector General received 62,000 allegations of Social Security number abuse, but only could investigate 4,632 of those cases; for cases opened in 1999, 1,347 cases resulted in criminal convictions as of April 30, 2002.<sup>35</sup>

## **Possibilities for Fixing the Broken System**

Policymakers may wish to consider a variety of options for fixing the current employment-authorization system.<sup>36</sup> The possibilities can range from tinkering with the current system to instituting a whole new system. On one extreme would be instituting a national identity card; however, this policy has been well debated and rejected in past policy debates. In fact, the Immigration & Nationality Act, section 274A, specifically states that work-authorization identification should in no way endorse a national identity card. On the other extreme may be removing any requirements for work-authorization verification at all. But, while this avenue would address the lack-of-enforcement problem, it surely would fail to solve the illegal immigration problem.

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application for a Social Security number (but is not changed later without individual action from the bearer). As such, Social Security Administration cannot accurately verify whether a person is a citizen or not at this time.

<sup>34</sup> Government Accountability Office, "Social Security Administration Actions Needed to Strengthen Processes for Issuing Social Security Numbers to Children," GAO-05-115 (2005). General Accounting Office, "Immigration Control: A New Role for the Social Security Card," GAO/HRD-88-4 (1988).

<sup>35</sup> General Accounting Office, Report to the Honorable Sam Johnson, House of Representatives, "Identity Theft: Greater Awareness and Use of Existing Data Are Needed," GAO-02-766 (2002), p. 4. SSA/OIG noted in the report that it did not have enough investigators to follow up on all related leads.

<sup>36</sup> The problem of employers paying for illegal work "under the table" and without any official record is beyond the scope of this paper. Various inspection schemes and perhaps added tax record responsibilities may be solutions for this problem.



Another option is for government to institute massive inspections of I-9s at employer worksites by immigration enforcement authorities. This seems unrealistic, given the meager resources and multiple priorities of the Department of Homeland Security. (That is not to say, however, that supplementing current enforcement resources would not in itself be helpful to achieving the immigration-related goals of the Department.) Another possibility is to enhance automated data verification of documents and information already in use and secure those documents against the widespread misuse seen today. As discussed above, however, relying on a multitude of documents appears to increase the chance that fraudulent documents could be used in the process. Thus, one unified work authorization document for both Americans and aliens may hold a superior solution to various ideas that have been floated.

### **Is the “Basic Pilot Program” for Automated Work-Authorization the Solution?**

The House of Representatives endorsed the concept of automated verification of documents when it passed H.R. 4437 late last year. That bill would make mandatory for all employers the use of the Internet-based system known as the “Basic Pilot Program.”<sup>37</sup> This program has been in existence for nine years as a voluntary, pilot program, but it must be noted that only about 2,300 employers use it.<sup>38</sup> The business community has largely reacted adversely to making it mandatory because of concerns that it would disrupt business with a high percentage of “false-negative” work-authorization non-verifications.<sup>39</sup>

Here’s how the “Basic Pilot Program” works: employers use a Department of Homeland Security Internet portal to enter the name, Social Security number, and (if applicable) the Alien Number (or “A#”)<sup>40</sup> of the new hire. A response screen appears with a verification of a valid Social Security number matched with a name, and, if applicable, verification of employment authorization associated with an Alien Number. This online screen can be printed as a receipt and contains an individual receipt number for the employer to keep in his records. If the on-line system cannot match the name with a valid associated Social Security number, or the Alien Number does not match a U.S. Citizenship & Immigration Services record indicating work authorization, a non-verification screen appears.<sup>41</sup>

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<sup>37</sup> In 1996, the enactment of the Illegal Immigration Reform & Immigrant Responsibility Act of 1996 (IIRIRA) required that the former Immigration and Naturalization Service (INS) and the Social Security Administration initiate pilot programs to use automation in verifying employment authorization. The Basic Pilot Program Extension and Expansion Act of 2003 required the Secretary of Homeland Security to expand the most successful pilot, now called the “Basic Pilot Program,” to all states by December 1, 2004.

<sup>38</sup> FY2004 Figure. Government Accountability Office (GAO), “Immigration Enforcement: Preliminary Observations on Employment Verification and Worksite Enforcement Efforts,” GAO-05-822T (June 21, 2005). Since that report, more employers may have joined the program.

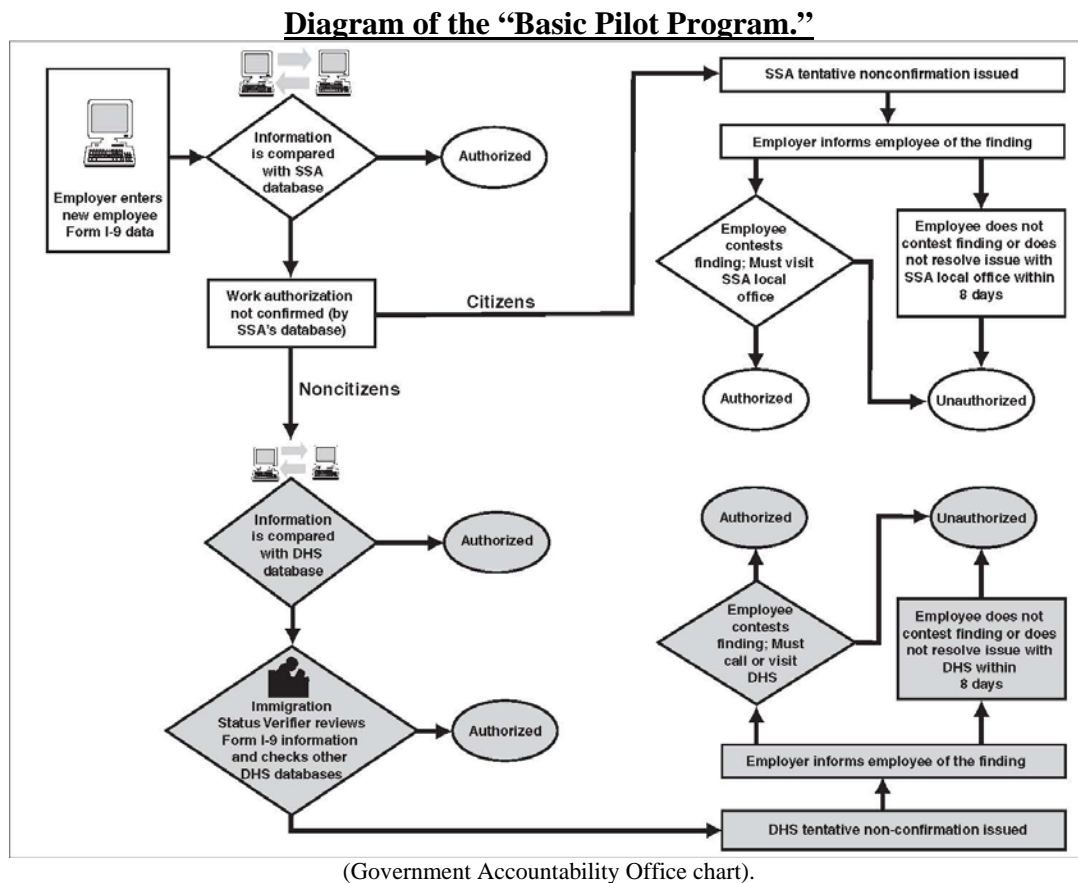
<sup>39</sup> American Council on International Personnel, “Worksite Enforcement in the Immigration Reform Debate” (2006), <http://www.acip.com/positionpapers>. R. Bruce Josten, U.S. Chamber of Commerce, Letter to Congress, [http://www.uschamber.com/issues/letters/2005/051215border\\_rule.htm](http://www.uschamber.com/issues/letters/2005/051215border_rule.htm) (2005).

<sup>40</sup> Alien Numbers are issued to aliens whenever an alien applies for the first time for benefits at USCIS (and without tying that action to any past action). For example, an alien who entered the country as a tourist and then applies for work authorization would receive a new Alien Number; that same alien may abandon those plans, but come back years later, and apply for new benefits and he would be given a new Alien Number again (unless proactive steps were taken). New Alien Numbers can attach to aliens through mistakes in processing. When this happens, there can be two files associated with an alien and, if known, little action can occur on that alien’s case until the files are compiled together.

<sup>41</sup> The employer is required to inform the new hire that he has eight working days to clear any discrepancies with U.S. Citizenship & Immigration Services or Social Security Administration. If the new potential hire does not clear



While the “Basic Pilot Program” is often touted as an “on-line I-9 form,” there are some important differences. Key among them is that the pilot program requires the employer to enter the new hire’s Social Security number to complete the verification process. This avoids the current enforcement problems, discussed above, that arise from having no requirement that new hires submit a verifiable Social Security number. However, the “Basic Pilot Program” does not require the electronic submission of new hires’ addresses and supporting document numbers, such as passport numbers and driver’s license numbers (as the paper I-9 system does). Meanwhile, the “Basic Pilot Program” still requires the maintenance of paper I-9 forms, so it does not relieve employers of any paperwork burden.



The benefit of the “Basic Pilot Program,” if made mandatory, is that it requires the electronic submission of a new hire’s name and Social Security number *at the time of employment*. It can verify that a name is associated with a Social Security number and (if applicable) an Alien Number indicating work authorization. The key problem, however, is that it does nothing to verify a person’s identity and that the Social Security number is associated with that identity.<sup>42</sup> Therefore, an illegal alien wishing to pass through the “Basic Pilot Program” may

up the problem, the employer is required to inform U.S. Citizenship & Immigration Services through the same on-line process whether the employee continues to be employed there. Sometimes, employers will query the Basic Pilot Program after the employee has been hired.

<sup>42</sup> Social Security Administration has opined in briefings with Republican Policy Committee staff that it believed identity theft (Social Security number with associated name) is likely to rise with a mandatory implementation of the “Basic Pilot Program,” but it will be harder for illegal aliens to gain employment without stealing someone’s Social



do so by obtaining fraudulent identification documents with an American's name that is associated with a stolen (and duplicate) Social Security number. As previously noted, multiple submissions of the same Social Security number do not raise any flags because the Social Security Administration simply assumes the American worker has changed jobs or "moonlights" at another job. These and other problems that auditors found with the "Basic Pilot Program" may lead one to think of alternatives.<sup>43</sup>

### **If Not "Basic Pilot Program," Then What?**

Maintaining the present system only serves to burden employers with work that can lead to unfair liability. Thus, policymakers should consider a means to remove this burden while strengthening work authorization verification. Shifting the burden to the government appears to be the only method to achieve this goal. However, shifting much of the burden of employment verification onto the government by resorting to the "Basic Pilot Program" has many problems and has been opposed by some in the business community.<sup>44</sup>

The ultimate fix for the current system, it would seem, is a single valid card to easily demonstrate work eligibility with one valid central database that can verify it (it will be harder to mismatch entry of valid names and associated Social Security numbers if both appear on the same card).<sup>45</sup> There is no one document that is, at this time, both *secure* and universally acts as a work-authorization document for both American citizens and aliens. An American citizenship document, such as a passport, may act as a work authorization document, while a green card may act as one for certain aliens; however, no one card acts as both for aliens and American citizens. Further, while work-authorized aliens can obtain an Employment Authorization Card (Legal Permanent Residents simply use their green cards), most American citizens do not have a

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Security number and associated name. Note that the Social Security Administration is not able to confirm with accuracy whether a person with a valid Social Security number is a U.S. citizen or not (but in most cases since the early 1980s, most Americans born in the U.S. or abroad are so noted in their database).

<sup>43</sup> Another shortfall of the Basic Pilot Program is that it does not require the submission of supporting (and identity) document numbers and employee addresses, and even it were, there are no mechanisms in place to check the document numbers with relevant government databases.

Another problem with the "Basic Pilot Program" is that once issued, Social Security numbers remain valid until there is a reported death (there are reported cases of Social Security Administration issuing benefits to people whose unreported deaths benefit relatives who receive the benefit checks). Also, U.S. Citizenship & Immigration Services does not record entry of a work authorized alien at the port of entry in such a way that it has real-time information about an alien's employment authorization. Finally, outside auditors reviewed the Basic Pilot Program in 2002, and found some problems related to accuracy and timeliness of relevant data (Institute for Survey Research, Temple University, "INS Basic Pilot Evaluation: Summary Report," Report Submitted to U.S. Department of Justice, January 29, 2002).

<sup>44</sup> American Council on International Personnel, "Worksite Enforcement in the Immigration Reform Debate" (2006), <http://www.acip.com/positionpapers>. R. Bruce Josten, U.S. Chamber of Commerce, Letter to Congress, [http://www.uschamber.com/issues/letters/2005/051215border\\_rule.htm](http://www.uschamber.com/issues/letters/2005/051215border_rule.htm) (2005).

<sup>45</sup> For example, a foreign student may be able to obtain a REAL ID driver's license, but would not be work-authorized. Last year, Congress passed the "REAL ID Act" (in P.L. 109-13), which mandates that the Department of Homeland Security shall issue regulations to raise the level of security of state-issued driver's licenses. REAL ID was enacted in part because the 9-11 terrorists carried 13 state driver's licenses in total, and 21 state-issued ID cards. The REAL ID documents may eventually assist as more secure identification documents and possibly provide information about how long the card-holder is legally able to stay in the country, but it will not verify work authorization.



passport.<sup>46</sup> Therefore, if the government could come up with one universal and secure identification card that can act for citizens and aliens alike in work-authorization, the verification system could be greatly simplified and made more secure. Certainly, the Social Security number and associated name is in widespread usage now for tax, credit checks, banking, job applications, and other government and private-sector purposes; in effect, it acts as a universal work authorization number. Its availability to the government at the time of hire could be a simple condition of work-authorization,<sup>47</sup> and serve to help clean up the nine-zero database problem.<sup>48</sup> In a manner similar to how credit card checks are conducted at retail establishments,<sup>49</sup> Social Security numbers can be checked against a government database that obtains checks against other databases (such as state birth and death certificate, REAL ID driver's license, credit, and passport databases).<sup>50</sup> In this way, fraudulent submissions to the database would be greatly reduced. Moreover, the government would not be doing any more than what private credit companies already do when a consumer uses his credit card or applies for a loan.<sup>51</sup>

That central database should be managed by one lead agency with the role of work authorization and it should be given wide access to other government databases. Such an entity

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<sup>46</sup> Only approximately 20% of Americans have passports. The Intelligence Reform and Terrorism Prevention Act of 2004 Act requires the use of an American passport to leave and enter the country even when traveling to a contiguous country. That requirement may increase passport usage.

<sup>47</sup> Testimony of Barbara Jordan, Chair, U.S. Commission on Immigration Reform, before the House of Representatives, Committee on the Judiciary, February 24, 1995 (“*We believe that employer sanctions can work, but only with a reliable system for verifying authorization to work.* Employers want to obey the law, but they are caught now between a rock and a hard place. The current system is based on documents. An employer must either accept those documents, knowing that they might be forged, and thus live with vulnerability to employer sanctions for hiring someone presenting false identification. Or, an employer may choose to ask particular workers for more documentation, which is discrimination. The Commission has recommended a test of what we regard as *the most promising option: electronic validation using a computerized registry based on the social security number.* This is the only approach to deterring illegal immigration that does not ignore the half of the problem, the visa overstayer problem you are investigating today. We are pleased with the prompt, bipartisan support that this highly visible recommendation has received, and we look forward to real results from pilot projects before our final report in 1997.”) (emphasis added).

<sup>48</sup> This could also serve as an impetus to clean up other database problems, such as typos and name-Social Security number mismatches.

<sup>49</sup> For more information on how credit card authentication works, see <http://money.howstuffworks.com/credit-card4.htm>. For information on fraudulent account takeovers, see General Accounting Office (GAO), “Identity Theft,” GAO-02-424T (2002). In 1996, U.S. consumers had nearly 1.4 billion cards, which they used to charge \$991 billion in goods annually; according to GAO, banks reported \$79.9 million in theft related losses in 1996 (i.e., a small fraction of a percent of the total charged by consumers.) See also <http://www.infoplease.com/ce6/bus/A0813973.html>.

<sup>50</sup> Any new process to verify already existing identity documents (such as driver's licenses or military identification cards) would require the cooperation of other state and federal agencies, and/or contracts with private sector firms. For that to work, Congress would almost certainly have to authorize a single office, probably located in the Department of Homeland Security, with the authority to access and coordinate with the relevant state and federal databases. One problem with the current I-9 system and with the “Basic Pilot Program” is that it relies on two agencies, neither of which are charged with the mission of worker verification. Social Security Administration is charged with managing a benefits program for those who have worked in the United States (both citizens and non-citizens). USCIS is charged with managing benefits given to aliens (one of which is employment authorization), but is not concerned with citizens. There is no one agency charged with managing work authorization for both citizens and aliens.

<sup>51</sup> Credit card companies and mortgage companies will check numerous private databases when you apply for credit, such as LEXIS/NEXIS, where real estate purchase transactions, licensing, and other recorded transactions about you are maintained. The system also checks that you are not in two places at once or that you have not deviated from spending habits (e.g., you shop at WALMART for 10 years, but then suddenly start shopping at Burberry's).





For example, work-authorized aliens are either (a) Legal Permanent Residents, in which case, they would use their green card for work authorization, or (b) non-immigrants, in which case, they could be provided an Employment Authorization Card. Both of these cards already are made to hold biometric information about the alien, are relatively secure, and are capable of holding more information in a metallic strip.

The same could be said of new citizenship documents for American citizens (who are all, of course, work authorized). However, since the vast majority of Americans do not have a passport, a secure card for Americans would have to be developed over time that could hold the Social Security number and associated name. The process of providing a universal work authorization card (most likely in the form of a Social Security card) could at least start with all new hires. Congress could mandate that the Department of Homeland Security and the Social



Security Administration develop a method to produce and distribute secure cards with Social Security numbers embedded in them.

Regardless of form, when Congress considers the President's request for an alien temporary worker program, it should also consider what some think is already part of the process – mandatory use of the Social Security number embedded in a secure universal work-authorization card. Eventually, the number and card would come to be accepted as the method for government (rather than the employer) to verify work authorization.

## **Conclusion**

Without a viable work-authorization regime as an underpinning for immigration reform, the government will encourage the growth of illegal immigration as it reinforces the perception among would-be immigrants that, despite their illegal status, they can easily gain employment in the United States. The current paper-based work-authorization system is broken. It places the onus on the employer to be an expert in document authentication but ties his hands with discrimination liability if documents are inspected too carefully.

Instead, the government should consider taking the role of work verification away from the employer and handle the verification directly. This can only be successful if databases guard against the potential for illegal aliens to use duplicate or manufactured document numbers and documentation. To achieve this goal, insecure and invalid documents currently used for work authorization verification must be discarded in favor of a single identification that can act as universal work-authorization verification. There is no one secure document required in the work authorization verification process that is universal for citizen and alien alike. Therefore, one great simplification that can fix the broken work authorization system would be to require the Social Security number as a primary element of the system, and to embed the number in secure documents, such as green cards, passports, and upgraded Social Security cards.



# ADDENDUM

## Current Paper I-9 Form Work Authorization System

